In the Name of Allah, the Beneficent, the Merciful

LEGAL PROBLEMS OF AFGHAN REFUGEES

by Mahbooba Karokhail

Mr. Chairman, Ladies and Gentlemen:

Before I start, I do want to express my thanks to the organizers of this grand seminar and The Asia Foundation who provided me the opportunity to participate in this conference and to say a few words about one of the largest refugees problem in the world to day.

As you may be aware about half of Afghanistan's entire population has been displaced. About five million have been forced to leave the country and over three million are refugees inside Afghanistan, it is obviously not possible to cover in this conference the full range of problems that the Afghan refugees face, I will therefore restrict my remarks to a few key problem particularly legal ones.

In April 1978, a group of misguided and conspiratorial elements usurped the power of the lawful government of Afghanistan. In this conspiracy, not only the president and all his family were killed, but later on, intellectuals, professors, high-ranking officials and military officers were eliminated by the new communist regime. As a result, lawlessness dominated in the country and the climate of trust in the rule of law disappeared.

The communist regime also killed, tortured and imprisoned traders, farmers and students and plundered their properties. Intimidation, persecution and search of houses without reason or warrant made life unbearable for the majority of Afghans, who were forced to flee to the neighboring Islamic countries of Pakistan and Iran. The continued terror and barbarism in the country intensified the flood of migration, and the Afghans launched their Jehad (Holy War) of freedom against the atheists and sold-out elements.

The Soviet army which invaded Afghanistan in December 1979 did not expect to encounter people who prefer death over serfdom. In retaliation for their heroic resistance, the Soviet army resorted to massacre and mass destruction of the villages, towns and cities. They killed innocent people, and destroyed the livestock, the agriculture and irrigation systems. Their carpet-bombing turned the country to ruin. They demolished the vital

economic resources and infrastructure of Afghanistan.

All these crimes by the Soviets caused the mass immigration of the Afghan people. The 5 million refugees are the world's highest in number. In addition there are over three million refugees inside Afghanistan whose plight is as severs if not more than those that leav of life the country.

Now, a question arises, how do that many homeless and dispirited people live? The answer is clear. The life of the refugees is a life of misery and deprivation. I would like to examine briefly some of the human rights and legal aspects qf the Afghan refugee situation in Pakistan:

1. Administrative
2. Basic human rights in the camps, including,
   a. Shattered families
   b. Lack of education
   c. Lack of health care
3. Civil codes
4. Criminal law enforcement
5. Repatriation

1. Administrative Problems

The enormous number of Afghan refugees on one hand and the inefficient administrative system of the host country on the other create a number of administrative problems for the refugees. Some of the principal administrative problems are:

a. Registration

Refugees are confronted with registration problems in their first encounter with the authorities of the host country. Registration may be suspended for months due to the lack of registration facilities in the border towns. The refugees face severe conditions in these border areas with no facilities and no access to shelter or rations. There are some refugees who have not been granted asylum even after two years in exile.

b. Identity cards

When entering Pakistan, the immigrants have to acquire a membership card from one of the Afghan parties before they can apply for an identity card. Most of the refugees are housed at far-away distances in the camps where their access to Peshawar and Quetta is difficult. Again it takes several months and great expense to obtain an identity card.

c. Travel documents

International travel outside Pakistan is allowed through a one-

page travel document called a Certificate of Identity, for which you need the identity card and a sheaf of supporting documents. This piece of paper is highly suspect to many embassies and airport immigration offices.

2. Basic Human Rights in the Camps

The sites of most of the camps are selected by the host country and are usually far from major towns and many are in the desert areas with no drinking water or other facilities. Climatic conditions in summer and winter pose great difficulties for the refugees. As a result the rate of mortality among infants, young children and other vulnerable groups is very high. The minority of Afghans who have economic possibilities live in the towns but they are deprived of access to the rations issued to the rest of the refugees.

Some specific problems of human rights in the camps are:

a. Shattered families

The present situation has created chaos among the refugee families. In the normal situation, every family has its own way of living within its economic framework. When a family is displaced by force it loses some of the sacred traditions the family is accustomed to; the normal structural relations of the family which facilitate a smooth life are disrupted.

The Jehad and the bombings have left many widows and many children orphaned. Women alone are vulnerable to abuse. Protecting their rights in thier critical conditions is a big burden. Men absent on Jehad for months leave many families with no guardians. Widows are sometimes denied rations if they have no male relative to go out and represent them. Illiterate and poor, they are unaware of their rights and unable to defend their rights.

The orphaned and disabled, a large group in the refugee camps, are also not receiving proper attention. Institutions to look after these three most vulnerable groups, the widows, orphans and disabled, in a systemic way do not exist. A few relief organization and some Afghan Mujahideen parties run centers for rehabilitating these people but in selective camps or in separate compounds.

b. Lack of Education

The life in exile and the distance of the camps from major cities have kept children away from formal education, though there are a number of primary and secondary schools run by Mujahideen parties and the Pakistan Government through the Afghan Commissionerate. All these schools came under the Ministry of Education of the Afghan Interim Government after 1989. Due to lack of funds,

trained educational personnel and a unified curriculum, the standard of education is low in these schools. And the majority of youths are still deprived of the right to education, particularly the female segment of refugee children.

Afghan female refugees deserve an equal right to education because they have suffered equally from the hardships and consequences of the imposed war and fought shoulder to shoulder with their brothers against the invasion of Soviet forces and were ruthlessly killed in the streets of Kabul by the Soviet soldiers; their right to education is denied by the prevailing conservatism, as well as by poverty and lack of schools.

c. Lack of Health Care

The camps are faced with an acute shortage of health facilities, doctors (especially women doctors), nurses and medicine. Malnutrition is a major cause of mortality among the children and a factor in many other diseases. The unbearable hot weather in the summers increases mortality in the camps. Prevalence of diseases on one side and lack of job opportunity on the other creates trauma and stress and disappointment among the refugees. To escape from the painful realities, some of the youths have turned to drugs.

3. Problems with the Civil Code

According to the Geneva Convention, all refugees possess the same rights as the citizens of a host country. No refugee should be treated with bias and no citizen of the host country be preferred over the refugee.

For centuries, Afghans have resolved their differences and feuds through consultation and counselling according to their code of conduct. Elders, religious leaders and other prominent figures comprise the Jirgah, or council, which has the authority of settling all disputes. Sometimes it happens that some of the civil problems of the refugees are decided in the courts of the host country. For instance, after marriage a couple can register with the official courts in Pakistan. Those that are unregistered may face difficulties if a dispute over divorce or inheritance should occur.

On the part of Pakistani courts and law enforcement authorities, there is no official discrimination against Afghans when it comes to a dispute between Afghans and Pakistanis. However, the language of the courts (Urdu or English) and the cost of legal counsel prevent refugees from pursuing civil disputes in the courts. Afghan can sell and purchase anything except real estate and land.

4. Problems with Criminal Law Enforcement

Fortunately, compared to the high population of refugees, the crime rate is low. Sometimes cases are registered with normal Pakistani courts. Though the law is equal for both Afghans and Pakistanis, the Afghans cannot afford bail or legal assistance. Therefore, they remain in prison for very ordinary cases for longer durations. Many violent crimes against Afghans (as well as against Pakistanis) remain unresolved. Inefficient law enforcement is a problem for the refugees and the host country population. Afghan refugees, in any case, are unaware of Pakistani law.

5. Repatriation Problems

It is natural that after 13 years of harsh life as a result of the war the fabric of social, political, economic and family life has been torn apart. Therefore, the refugees will face tremendous difficulties when they repatriate.

For the return of the refugees, security and respect for human rights are necessary. As long as there is no security or respect for human rights how can the people begin to repatriate?

Among the important tasks which lie ahead are clearance of mines, repairing and rebuilding of the irrigation networks, agriculture and infrastructure rehabilitation and improving living conditions, which must be tackled by joint efforts of the future central government, the United Nations and other friendly organizations and countries.

Property ownership will be a major problem in the legal future Afghanistan for the following reason:

- The offices for registration of land ownership and their records have been destroyed.

- Because of continual bombing, the demarcation lines have been destroyed and people can hardly recognize their properties.

- Property has been redistributed to others in the name of the so-called democratic land reforms.

- Elimination of the inheritors or their absence may create problem. Houses and commercial buildings have been confiscated by the communist regime and sold to other people, then resold to third or fourth parties. Restoration of these properties to the original owners will be a very complicated process.

Unless institutions are established to look after the widows, orphans and disabled, these people will be at even greater risk during the process of repatriation.

To conclude I would like to say that despite the fact that the Afghan refugees are enjoying considerable freedom compared to the refugees in other parts of the world, the general living conditions are harsh and sometimes unbearable, and basic rights as listed in the Universal Declaration of Human Rights of 1948 to personal security, education, health care, freedom of movement, do not exist.

Afghans agree on the need to establish an Islamic Government based on the will and aspiration of the Afghan people. Only then the legal problems of refugees can be resolved.

At the end I would like to thank all friendly countries, international aid agencies and all other people who assisted and backed the heroic people of Afghanistan in their lawful struggle against the forces of evil. We hope we have their support after the liberation of Afghanistan for the reconstruction of this devastated country. I would like to thank the Islamic and friendly people of Pakistan in particular for all the support and backing they have rendered to their Afghan brothers.